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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932.

No. 171

MRS. J. H. POBRESLO, APPELLANT,

vs.

JOSEPH M. BOYD COMPANY, CLARENCE E. KARN, L. D. ATKINSON, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

FILED JUNE 23, 1932

(36,868)

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IN SUPREME COURT OF THE UNITED STATES

Mrs. J. H. Pobreslo, Plaintiff and Appellant,

vs.

Joseph M. Boyd Company, Defendant, and Clarence E. Karn, L. D. Atkinson and Leo T. Crowley and Edward J. Samp, Garnishee Defendants and Respondents

Petition for Appeal, Assignment of Errors, and Prayer for Reversal—Filed May 31, 1932

Petition for Appeal

Considering herself aggrieved with the final decision of the Supreme Court of the State of Wisconsin in the above entitled cause, the appellant named herein as Mrs. J. H. Pobreslo hereby prays that an appeal be allowed to the Supreme Court of the United States herein and for an Order fixing the amount of bond thereon.

Assignment of Errors

And the said appellant assigns the following errors in the record and proceedings in said case:

That the Supreme Court of the State of Wisconsin erred in:

1. Holding that Chapter 334, Laws of 1897 of Wisconsin, constitutes a valid enactment and barred the plaintiff from [fol. 2] maintaining a garnishment action against the assignees, even though the assignment was otherwise void.

2. In failing to hold that Chapter 334, Laws of 1897 of Wisconsin, is not in effect an involuntary bankruptcy system with provision for discharge and was wholly suspended by the National Bankruptcy Act.

3. Holding that the State Statute such as Chapter 128, Wisconsin Statutes, which provides for the distribution of the assets of an insolvent debtor among his creditors, is not

suspended by the Bankruptcy Act, regardless of whether it contains a valid provision for discharge.

4. In failing to hold that any statutory proceedings such as contained in Chapter 128, Wisconsin Statutes, which provides for the ratable distribution of the property of insolvents among their creditors, is within the field entered by Congress when it passed the National Bankruptcy Act.

5. In failing to hold that a statutory proceeding such as Chapter 128, which provides for the ratable distribution of the property of insolvents among their creditors in a manner different from and inconsistent with the provisions of the National Bankruptcy Act, is not suspended by the National Bankruptcy Act.

6. In failing to hold that the proceedings in the State Court under Chapter 128 were tantamount to an insolvency proceedings and were, therefore, within the field occupied by Congress when it passed the National Bankruptcy Act.

7. In holding that the assignment in this case was effective to withdraw the assigned property from a non-resident creditor who was unable to invoke the Bankruptcy Act.

[fols. 3 & 4] 8. Holding generally that the several provisions of Chapter 128, Wisconsin Statutes, relating to assignments for the benefit of creditors, are separate and distinct from the provisions of said chapter relating to the discharge of insolvent debtors.

Prayer for Reversal

For which errors the appellant named herein prays that the judgment of the Supreme Court of the State — Wisconsin herein appealed from be reversed and a judgment rendered confirming the judgment of the Circuit Court for Dane County, Wisconsin.

Clifford G. Mathys, James H. Wegener, Robert M. Rieser, Counsel for Appellant. Olin and Butler, Wegener & Roick, of Counsel.

[fol. 5] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed May 31, 1932

The appellant in the above entitled suit having prayed for an allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Circuit Court of Dane County, Wisconsin, on January 27, 1932, and appealed to the Supreme Court of the State of Wisconsin and reversed by an opinion filed herein on the 10th day of May, 1932, and the Mandate issued pursuant thereto; and from each and every part thereof, and having presented and filed their petition for appeal, assignment of errors and prayer for reversal pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided;

It is now here ordered that an appeal be and the same is hereby allowed in the Supreme Court of the United States from the Supreme Court of the State of Wisconsin [fols. 6-22] in the above entitled cause as provided by law, and it is further ordered that the Clerk of the Supreme Court of the State of Wisconsin shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within thirty days of this date.

And it is further ordered that security for costs on appeal be fixed in the sum of five hundred 00/100 Dollars.

Dated this 31st day of May, 1932.

Marvin B. Rosenberry, Presiding Justice of the Supreme Court of the State of Wisconsin. (Seal Supreme Court of Wisconsin.)

[fol. 23] [File endorsements omitted]

IN CIRCUIT COURT OF DANE COUNTY

Mrs. J. H. POBRESLO, Plaintiff,

vs.

GUARANTY MORTGAGE CORPORATION and THE JOSEPH M. BOYD COMPANY, Defendants; Clarence E. Karn, L. D. Atkinson, and Leo T. Crowley, Garnishee Defendants

GARNISHEE AFFIDAVIT—Filed Sept. 1, 1931

STATE OF WISCONSIN,
County of Dane, ss:

C. G. Mathys being first duly sworn, on oath says that he is one of the attorneys for the plaintiff above named and makes this affidavit on her behalf, being thereunto duly authorized; that a summons has been issued in the above entitled action; that the same is an action to recover damages founded upon express contract; that the amount of the plaintiff's claim against the above named defendant, The Joseph M. Boyd Company, is Twenty Five Hundred Dollars ($2,500), together with interest thereon at six per cent from April 10, 1931, over and above all offsets. That Clarence E. Karn, L. D. Atkinson and Leo T. Crowley are jointly indebted to and have property, real and personal, in their possession and under their control belonging to the defendant The Joseph M. Boyd Company, and that such indebtedness and property are to the best of the knowledge and belief of this affiant not by law exempt from seizure or sale upon execution.

That The Joseph M. Boyd Company is a corporation [fol. 24] organized and existing under and by virtue of the laws of the State of Wisconsin with its principal office and principal place of business in Madison, Dane County, Wisconsin; that on the 23rd day of March, 1931 the said The Joseph M. Boyd Company, being then insolvent, by an instrument in writing, purported to assign and set over all of its assets, its real and personal property of every kind and description, to Clarence E. Karn, L. D. Atkinson and Leo T. Crowley, as assignees, to distribute the said assets and property among the creditors of the said The

Joseph M. Boyd Company, in accordance with the provisions of Chapter 128, Wisconsin Statutes of 1929.

That the said assignees on March 23, 1931, took immediate possession of the said assets and property and immediately took upon themelves the execution of the trust conferred upon them by said purported assignment and that they immediately, as such assignees, and on March 23, 1931, petitioned the Circuit Court for Dane County, Wisconsin, to assume jurisdiction over the administration of the assets and property so assigned to them, and that in accordance with the prayer of the said petition, the said court on the same day assumed jurisdiction over the administration of the assets so transferred and assigned under the provisions of said Chapter 128, Wisconsin Statutes of 1929.

That the said assignment is wholly void and inoperative for the reason among others that the said assignees immediately took possession of the said property and assets, and immediately took upon themselves the execution of said trust, without procuring, furnishing or delivering any bond [fol. 25] whatsoever, as required by Section 128.06, Wisconsin Statutes; that before taking possession of the said property and taking upon themselves the execution of the said trust, under said assignment, they entirely neglected and failed to procure and to deliver to the county judge or to a court commissioner of Dane County, or to any one any bond whatsoever; that they have at no time procured, furnished or delivered over to the county judge or court commissioner or the clerk of the Circuit Court for Dane County a bond in a sum equal to the present value of the assets of said assignor; that on or about April 11, 1931, each of the said assignees filed with the Circuit Court for Dane County a separate bond in the penal sum of Ten Thousand Dollars ($10,000); that the value of the assets of said assignor on March 23, 1931, and at all times thereafter was and has been vastly in excess of Thirty Thousand Dollars ($30,000), that the said bonds in the sum of Ten Thousand Dollars ($10,000) were at no time delivered to a county judge or court commissioner; that in connection with the execution and delivery of said bonds the value of the assets of The Joseph M. Boyd Company was at no time ascertained by the oath of witnesses and of the assignor, as required by Section 128.06, Wisconsin Statutes.

That the said assignment is void for the further reason that neither the said assignment nor a full and true copy thereof was at any time delivered to the county judge or a court commissioner, nor did the assignees in the presence of a county judge or court commissioner, before delivering a copy of the said assignment to the county judge or a court commissioner, endorse in writing on such assignment, or a [fol. 26] copy thereof, their consent to take upon themselves the faithful discharge of the various duties specified in said assignment, nor did they at any time endorse in writing on said assignment, or a copy thereof, their consent to take upon themselves the faithful discharge of the various trusts specified in said assignment; nor did a county judge or court commissioner endorse upon said assignment, or a copy thereof, that said assignees did, in his presence, endorse in writing their consent to so take upon themselves the faithful discharge of the various trusts specified in said assignment, all as required by Section 128.12, Wisconsin Statutes, 1929.

Upon information and belief affiant states that said assignees did not within twenty days after the execution of said assignment, make and file in the office of the Clerk of the Circuit Court for Dane County, Wisconsin, an inventory of the assets and a list of the creditors of said The Joseph M. Boyd Company, as required by Section 128.13, Wisconsin Statutes, and states further, upon information and belief that up to the present time no inventory has been filed, as required by said Section 128.13, Wisconsin Statutes, 1929.

That the said purported assignment is void for the further reason that the said court and the said trustees were wholly without power or jurisdiction to administer the assets of the said insolvent or to discharge it from its obligations, as prescribed by said Chapter 128, Wisconsin Statutes, 1929, such jurisdiction being in conflict with the provisions of the Bankruptcy Act (11 U. S. C. A.), which is by virtue of its enactment under the power vested in Congress by Article 1, Section 8, Clause 4, United States Constitution, supreme in all matters relating to the distribution of insolvent assets and the discharge of insolvent debtors. That [fol. 27] the said Bankruptcy Act supersedes all state laws dealing with the matter of the distribution of insolvent

assets, and with all state laws in conflict therewith, and vests in the Federal courts of Bankruptcy exclusive jurisdiction to administer the distribution of insolvent estate-, and to discharge insolvent debtors from their obligations.

That the said insolvent estate is now being administered and its assets are being distributed by the said trustees under the direction of the court, in accordance with the provisions of said Chapter 128, Wisconsin Statutes, 1929, and will continue to be so distributed. That the said Chapter 128, Wisconsin Statutes, 1929, besides providing for the discharge of insolvent debtors, among other things, classifies creditors in a manner materially different from the classification prescribed by the Bankruptcy Act, and prescribes the order for the payment of claims in a manner different and contrary to the provisions of the Bankruptcy Act, and creates preferences in favor of those creditors who file their claims within three months subsequent to the publishing of notice for filing of such claims, contrary to the provisions of the Bankruptcy Act. That the said differences between Chapter 128, Wisconsin Statutes, 1929, and the Bankruptcy Act are such as to cause a distribution under the said Chapter 128, Wisconsin Statutes, 1929, which is less favorable to general creditors, of plaintiff's standing, than the distribution provided for by the Federal Bankruptcy Act.

That the claim of the plaintiff against the said The [fol. 28] Joseph M. Boyd Company exceeds in amount Five Hundred Dollars ($500) over and above the value of any securities held by her, and that said claim is a provable claim within the intent and meaning of the Bankruptcy Act, but that the plaintiff is unable to invoke the jurisdiction of a Federal Court of Bankruptcy for the reason that the creditors of the said The Joseph M. Boyd Company, exclusive of its employes, are more than twelve in number. That diligent effort has been made to secure the joinder of a sufficient number of creditors of the said The Joseph M. Boyd Company with plaintiff in invoking the jurisdiction of the Federal Court of Bankruptcy, but plaintiff was unable to secure the joinder of other creditors to that end.

That the plaintiff has not filed a claim in the present proceedings pending in the Circuit Court for Dane County, Wisconsin, pursuant to Chapter 128, Wisconsin Statutes of

1929, and under the order of the court entered in that proceeding, preference will be given to creditors who have filed claims therein and the plaintiff will be debarred a dividend. That plaintiff is in all respects qualified to invoke, and would have invoked, jurisdiction of the Bankruptcy court, had she been able to secure the co-operation of a sufficient number of qualified creditors to that end.

That this affidavit is made by affiant on behalf of the plaintiff for the reason that the plaintiff is at present without Dane County, wherein affiant resides. That affiant's knowledge and information in respect to the matters herein set forth is based upon examination of the court records in the Circuit Court for Dane County in the matter of the [fol. 29] Assignment of The Joseph M. Boyd Company, and upon his personal investigation of the facts herein set forth.

C. G. Mathys.

Subscribed and sworn to before me this 29th day of July, 1931. Byron H. Stebbins, Notary Public, Dane County, Wisconsin. My commission expires April 2, 1934. (Notarial Seal.)

[fol. 30] [File endorsements omitted]

IN CIRCUIT COURT OF DANE COUNTY

[Title omitted]

AFFIDAVIT AND ANSWER IN GARNISHMENT—Filed Jan. 16, 1932

STATE OF WISCONSIN,
County of Dane, ss:

Edward J. Samp, being first duly sworn, on oath deposes and says that a garnishee summons in the above entitled action together with an affidavit in garnishment was served on the garnishee defendants on or about July 30, 1931, and that this answer is made by this affiant because of the reasons more fully set forth herein. That Leo T. Crowley, Clarence E. Karn and L. D. Atkinson or this affiant was then and is now in no manner and upon no account whatever indebted to the defendant, The Joseph M. Boyd Com-

pany, unless an indebtedness exists under the following facts and circumstances, to wit:

That The Joseph M. Boyd Company was and is a Wisconsin corporation organized and existing under and by virtue of the laws of the said State of Wisconsin, with its principal office or place of business in Madison, Wisconsin; that the said corporation was engaged in the business of selling securities, loans and other investments to the public and of lending money, and that the said The Joseph M. Boyd Company did on March 23, 1931, by an instrument, a copy of which is hereto attached and marked Exhibit A, assign, transfer and set over all its real and personal prop- [fol. 31] erty to Leo T. Crowley, Clarence E. Karn and L. D. Atkinson as assignees or trustees to dis*pute* the same amongst the creditors of The Joseph M. Boyd Company. That immediately following this assignment the said assignees took possession of the property and assets of the said corporation or some of them, and proceeded to the execution of the trust conferred upon them, and petitioned the Circuit Court for Dane County to assume jurisdiction over the administration of the assets and the property conveyed to them, and that the said Circuit Court for Dane County, Wisconsin, did assume jurisdiction over the administration of the assets and property so conveyed to the said assignees or trustees in trust.

That no bond was given by the said assignees before they received possession of the said property, and that no bond was given to the Clerk of the Circuit Court for Dane County, Wisconsin, in a sum equal to the value of the said assets, but that each of the assignees or trustees pursuant to an order of court duly made, did execute and deliver a separate and independent bond in the amount of ten thousand dollars ($10,000) each, and that the said bond in the amount stated also executed and delivered to the said Clerk of the Circuit Court for Dane County, Wisconsin, pursuant to an order of the said Circuit Court for Dane County entered on April 11, 1931, which said order expressly set out the amount of the said bond. That at the time the bond was so designated as to amount, there was no appraisal under oath by witnesses or of the assignor, the amount designated in said bond being set upon the petition of the said assignees.

That this affiant denies that the assignment is void for the reasons set forth in the affidavit of garnishment or for any other reason, but admits that while neither the assignment nor a copy thereof was delivered to the County Judge or Court Commissioner alleges the fact to be that the original assignment with the consent of the said assignees [fol. 32] to the assumption of the *the* trust was exhibited to one of the Judges of the Circuit Court for Dane County, Wisconsin, and was and has been since the 23rd day of March, 1931, filed in the office of the Clerk of the Circuit Court for Dane County, Wisconsin. That no inventory of the assets of the said The Joseph M. Boyd Company were made and filed in the office of the Clerk of the Circuit Court for Dane County, Wisconsin, within twenty (20) days after the making of said assignment because of the character of the assets and the number and items of the same it was not possible so to do, but that on March 23, 1931, by order of the Circuit Court the said assignees were directed to file with the Circuit Court for Dane County within thirty (30) days an inventory of the assets of the said The Joseph M. Boyd Company, and that thereafter there was filed in the Circuit Court for Dane County, Wisconsin, an order of the Circuit Court directing the said trustees to file such an inventory and a report on or before June 1, 1931, which was done, the said report consisting of a list of all the assets of the corporation and including a certified audit of the affairs of the corporation made by public accountants or auditors, but that the said Circuit Court for Dane County did by an order duly entered relieve the trustees from the necessity of making public the appraisals on items of real estate on the ground that to do so might hinder the sale of the said properties at prices in excess of the appraisal value.

That said certified public accountant's report contained a list in detail of all creditors of the said The Joseph M. Boyd Company. That said assignment is not void for the reason set forth in said affidavit and garnishment or for any other reason, and that Chapter 128 of the Wisconsin Statutes is not in contravention or derogation of the National Bankruptcy Act, and that on the contrary the said accounts of The Joseph M. Boyd Company were valid and constituted a conveyance in trust in the nature of a common law [fol. 33] assignment for the benefit of creditors of The Joseph M. Boyd Company, and that the Circuit Court for Dane

County in assuming administration over the said trust was wholly and entirely within its jurisdiction both under the provisions of Chapter 128 of the Wisconsin Statutes, and under its inherent powers of a court of equity in administering a common law trust for the benefit of creditors.

That the said Leo T. Crowley, Clarence E. Karn and L. D. Atkinson duly resigned said trust in writing, and that on or about the 4th day of December, A. D. 1931, the directors of The Joseph M. Boyd Company by an instrument in writing amended the former grant of conveyance for the assignment for the benefit of creditors, a copy of the resolution of the said Board of Directors and of the instrument supplementary and amendatory of the original assignment is hereto attached as Exhibit B.

That on or about the 10th day of December, A. D. 1931, the Circuit Court for Dane County, Wisconsin, by an order duly entered accepted the resignation of the said trustees and appointed this affiant, Edward J. Samp, as the sole trustee for the administration of the said trust which is being presently administered by this affiant under and by virtue of the appointment aforesaid.

That this affiant is possessed of the assets and property of the said The Joseph M. Boyd Company which were conveyed to the said Leo T. Crowley, Clarence E. Karn and L. D. Atkinson, Trustees since resigned, and makes this affidavit on behalf of himself as said trustee and on behalf of his predecessors in trust, namely, Leo T. Crowley, Clarence E. Karn and L. D. Atkinson, and is authorized so to do.

That except as herein set forth, neither Leo T. Crowley, Clarence E. Karn or L. D. Atkinson, nor this affiant had at the time of the service of said garnishment summons, [fol. 34] or now have in their or his possession or under their or his control, any real estate or personal property, effects or credits of any description belonging to the said The Joseph M. Boyd Company, or in which it has any interest.

Edward J. Samp.

Subscribed and sworn to before me this 16th day of December, A. D. 1931. Dora Wepking, Notary Public, Dane County, Wisconsin. (Seal.)

[fol. 35] Filed Feb. 20, 1932. Arthur A. McLeod, Clerk of Supreme Court, Madison, Wis.

EXHIBIT "A" TO AFFIDAVIT AND ANSWER

STATE OF WISCONSIN:

CIRCUIT COURT, DANE COUNTY

In the Matter of the Voluntary Assignment for the Benefit of Creditors of THE JOSEPH M. BOYD COMPANY

Petition

To the said Court:

Your petitioners, Leo T. Crowley, C. E. Karn and L. D. Atkinson, respectfully represent and show to the court:

That your petitioners were on the 23rd day of March, A. D. 1931, named as assignees or trustees under a voluntary assignment made by The Joseph M. Boyd Company of Madison, Wisconsin, a Wisconsin corporation located in the City of Madison, Dane County, Wisconsin, and engaged in carrying on a general investment and mortgage loan business; that one of the originals of the said assignment is herewith presented to the court and filed herein; that the said assignees, hereinafter referred to as "trustees", have commenced the administration of the said trust to the best of their ability, and in accordance with its terms; that your petitioners desire to send out a notice to all creditors and claimants against the said The Joseph M. Boyd Company notifying them to file claims; that your petitioners request that the Circuit Court for Dane County assume jurisdiction and supervision of the said trust and the administration thereof to the end that a fair and lawful distribution of the assets of the said corporation may be made amongst all creditors in accordance with the respective rights which said creditors may have against said assets.

That it appears to your petitioners that an immediate appraisal should be had of the assets of The Joseph M. Boyd Company in that it is represented to your petitioners that a large fraction of the assets of the corporation consists of real estate or investments secured by real es-

tate, and it is highly desirable that an effort be made to convert said real estate into cash as speedily as possible, in order to save or eliminate carrying charges, and your [fol. 36] petitioners therefore request that this court appoint disinterested persons having a knowledge of real estate in the City of Madison and Dane County wherein it is represented the greatest portion of the real estate is situated.

And it is further represented to your petitioners that the assets of The Joseph M. Boyd Company aside from open accounts or moneys due it for advances made for or on behalf of its respective clients, consist of equities in real estate, which said real estate, however, is held in the name of the Guaranty Holding Corporation, a corporation the entire common capital stock of which is owned by The Joseph M. Boyd Company, and that likewise The Joseph M. Boyd Company as the owner of all of the outstanding common stock of the Guaranty Mortgage Company caused mortgages taken by it to be used as the basis of debentures issued and outstanding, and that the equities over and above the amounts necessary to pay the outstanding mortgages constitute assets to the Credit of The Joseph M. Boyd Company, and that it is necessary in order for your petitioners to truly understand the affairs of The Joseph M. Boyd Company to cause an audit to be made of the affairs of the said corporation, which said audit should include audits of affiliated or subsidiary corporations of The Joseph M. Boyd Company, and any personal trusteeships or other accounts which may be necessary to completely show the affairs of The Joseph M. Boyd Company.

Wherefore your petitioners pray that the court above named take full jurisdiction and supervision of the trust and the administration thereof, and the distribution of assets amongst creditors according to their just rights and equities, and make such orders as may be lawful and proper to insure the execution of the said trust, and due allowance of all proper expenses of administration and the distribution of the assets amongst the creditors according to their just and lawful rights, and ask the court if it deems it proper now or at any time hereafter to appoint either a bank receiver or trustee to take charge of the administration or distribution; and that the court likewise appoint appraisals of [fol. 37] the assets of the corporation and authorize your pe-

titioners to employ certified public accountants to make a complete audit of its financial affairs.

Dated at Madison, Wisconsin, this 23rd day of March, A. D. 1931.

Leo T. Crowley, L. D. Atkinson.

STATE OF WISCONSIN,
County of Dane, ss:

Leo T. Crowley and L. D. Atkinson, being each duly sworn, for himself states that he has read the above and foregoing petition and knows the contents thereof; that the same is true to his knowledge except as to matters therein stated on information and belief and as to them he believes it to be true; that this verification is made on behalf of himself and his respective co-trustees or assignees with whom he is identified in interest.

Leo T. Crowley, L. D. Atkinson.

Subscribed and sworn to before me this 23rd day of March, A. D. 1931. William H. Spohn, Notary Public, Dane County, Wisconsin.

On reading and filing the above and foregoing petition and voluntary assignment for benefit of creditors herein referred to,

It is ordered that this court does hereby pursuant to law, and particularly under and pursuant to the provisions of Chapter 128 of the Statutes of the State of Wisconsin, take and assume jurisdiction and supervision over the administration of the assets and property of and in possession of The Joseph M. Boyd Company at the date of said assignment for the benefit of creditors made on March 23, 1931, and of any property that may have come into possession of the said assignees named in said assignment and the distribution of said assets amongst the creditors and claimants [fol. 38] against The Joseph M. Boyd Company according to their just and lawful rights.

It is further ordered that said assignees file with this court within thirty days, unless this time be previously extended in advance of its expiration, a full inventory of all property and assets which have come into the hands of the said trustees, and of such disbursements as they have made to that time.

It is further ordered than an appraisal be had in connection with such inventory of the assets of the said The Joseph M. Boyd Company coming into the hands of the assignees, and that in connection with said appraisal Henry Bush, Harry Haley and Alex Uehling, all of Madison, Wisconsin, and they are hereby appointed and designated as appraisers of the said assets with compensation for the said appraisers to be determined by the court hereafter.

It is further ordered that the assignees cause an audit to be made of the financial affairs of the corporation by some duly certified public accountant or accountants, and a copy of said report when completed to be filed in this court. The auditors or accountants chosen by the assignees shall make audits or examinations of such affiliated or subsidiary corporations as may be necessary to disclose the affairs of The Joseph M. Boyd Company, or the value of any securities which it may list among its assets and which have been issued by affiliated or subsidiary companies; and the assignees are hereby authorized to cause the said examination to extend to and include an audit of any corporate trusteeship or personal trust administered in connection with the affairs of The Joseph M. Boyd Company.

It is further ordered that the said assignees with all convenient speed mail out and publish notice to creditors of the said The Joseph M. Boyd Company as provided in Section 128.14 of the Wisconsin Statutes of 1929, and thereafter file proof thereof in this court as prescribed in Section 128.15 of the Wisconsin Statutes.

[fol. 39] It is further ordered that said assignees continue in the administration of said trust under said instrument until the further order of this court.

Dated March 23, 1931.

By the Court:

August C. Hoppmann, Circuit Judge.

Know all men by these presents that Joseph M. Boyd Company, a Wisconsin corporation located at Madison, Dane County, Wisconsin, pursuant to a resolution of its stockholders and a resolution of its directors has, and by these presents, does assign, set over, transfer and convey to C. E. Karn, Leo T. Crowley and L. D. Atkinson of the City of Madison, Dane County, Wisconsin, all its assets of

every kind, nature and description, wherever the same may be found or located, in trust, nevertheless, to receive, handle, manage the same, and convert them into cash to the end that the just and lawful debts and demands of this corporation may be paid and discharged, and the balance of assets after the payment of the costs of administration be returned to the stockholders of this corporation in accordance with the rights of said stockholders.

This assignment is made under the following terms and conditions:

1. The said assignees may fill vacancies in their number caused by death, inability to act or resignation of any assignee, and the trusts herein created shall not fail because of the inability of any trustee to proceed further herewith.

2. The reasonable expenses of administration, including reasonable compensation to the trustees and to counsel shall be first paid, and the assets then used to pay the claims and demands of creditors in the order of their priorities.

3. The assignees and trustees may submit themselves at any time to the supervision of the proper Circuit Court for Dane County, Wisconsin, and the corporation hereby engages to execute such other or further papers as may be [fol. 40] necessary or advisable to cause or effectuate a complete perfected assignment for the benefit of its creditors, and to execute and deliver such inventories, schedules, list of creditors or other information as may be requested at any time.

4. This assignment shall take effect immediately upon the assignees or trustees evidencing their acceptance thereof, and from that date the operation of the business on the part of the corporation will be suspended.

5. In and about the execution of this trust the trustees, or the majority of them, shall be entitled to incur expenses to operate the said business, if in their judgment further operation is desirable, and there is hereby conferred upon said assignees or trustees all the rights, powers and privileges that the corporation had or might exercise, had this assignment not been executed.

Done at Madison, Wisconsin, this 23rd day of March, A. D. 1931, by the officers of the corporation duly authorized to sign the corporate name and affix the official seal by appropriate resolutions of its stockholders and directors this day given.

The Joseph M. Boyd Company, by Joseph M. Boyd, President.

Attest: R. H. Farness, Assistant Secretary.
In Presence of: William H. Spohn, Frank A. Ross.

STATE OF WISCONSIN,
County of Dane, ss:

Personally came before me this 23rd day of March, A. D. 1931, Joseph M. Boyd, President, and R. H. Farness, Asst. Secretary of the above named corporation, to me known to be the persons who executed the foregoing instrument, and to me known to be such President and Secretary of said corporation, and acknowledged that they executed the fore- [fol. 41] going instrument as such officers as the deed of said corporation by its authority.

William H. Spohn, Notary Public, Dane County, Wisconsin. My commission expires June 18, 1933.

The undersigned each individually accepts the foregoing assignment and the trusts therein created.
Dated March 23, 1931.

Leo T. Crowley, L. D. Atkinson, Clarence E. Karn. (Seal.)

[fol. 42] THE STATE OF WISCONSIN:

IN CIRCUIT COURT FOR DANE COUNTY

DANE COUNTY, ss:

I, Mary Grane, Clerk of the Circuit Court in and for the County of Dane and State of Wisconsin, do hereby certify that I have carefully compared the foregoing and annexed copy of Petition, Order, and Assignment with the original now on file and of record in my office in the Matter of the Voluntary Assignment for the Benefit of Creditors of The

Joseph M. Boyd Company, and that the same is a true and correct copy of said original, and the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the Seal of said Court, at the City of Madison, in said County, this — day of ——, A. D. 19—.

—— ——, Clerk.

[Endorsed:] State of Wisconsin, Circuit Court, Dane County. In the Matter of the Voluntary Assignment for the Benefit of Creditors of The Joseph M. Boyd Company. Certified copy of petition, order and assignment.

[fol. 43] [File endorsement omitted]

EXHIBIT "B" TO AFFIDAVIT AND ANSWER

Whereas, under date of March 23, 1931, The Joseph M. Boyd Company executed and delivered a certain assignment for the benefit of its creditors, and the said assignment did provide amongst other things as follows:

"The assignees and trustees may submit themselves at any time to the supervision of the proper Circuit Court for Dane County, Wisconsin, and the corporation hereby engages to execute such other or further papers as may be necessary or advisable to cause or effectuate a complete perfected assignment for the benefit of its creditors, and to execute and deliver such inventories, schedules, list of creditors or other information as may be requested at any time."

and

Whereas, subsequent thereto and on the said 23rd day of March, 1931, the Circuit Court for Dane County did assume and take jurisdiction and supervision over the administration and affairs of the said The Joseph M. Boyd Company; and

Whereas, subsequent thereto and on proceedings held in the Circuit Court for Dane County, said court did enter an order or decree holding that the said assignment was a common law assignment, and intended by the said assignor as such; and

Whereas, the original assignment dated March 23, 1931, did not provide in detail for the administration of said trust, and it is on advice of counsel deemed advisable to execute a supplementary instrument for the purpose of carrying into effect the purpose of said original assignment to the end that the interests of all parties be fully protected, and that the administration of the trust may be expedited;

Now, therefore, be it resolved, That the Board of Directors of The Joseph M. Boyd Company do hereby authorize and direct the officers of The Joseph M. Boyd Company, to wit, its president and secretary, to execute that supplemental instrument, a copy of which is annexed hereto and marked Exhibit A, the same to relate back and be effective [fol. 44] as of the date of the original assignment, to wit, March 23, 1931, with the same force and effect as if it had then been adopted, and do further ratify all acts of the assignees in requesting the Circuit Court for Dane County to take supervision and direction over the administration of the trust created by the said assignment dated March 23, 1931.

[fol. 45] [File endorsement omitted]

EXHIBIT "A" TO EXHIBIT "B"

Know all men by these presents that that certain instrument of trust executed by The Joseph M. Boyd Company on March 23, 1931, be and the same is hereby modified and amended in the following respects:

1. Paragraph 1 of said assignment is modified so as to read:

"In case of the resignation of any or all trustees, or by reason of their disqualification or inability to act, or in case any vacancy shall occur, the said vacancy, however caused, shall be filled by the Judge of the Circuit Court for Dane County who may appoint a successor or successors of said Trustees, and may in his judgment appoint a single trustee or more than one trustee, as he shall determine, to the end that the trusts herein created shall not fail because of the inability of any or all trustees to proceed herewith."

2. That paragraph designated 3 is modified by adding to it the following paragraph:

"This assignment shall be deemed a common law assignment creating an express trust for the uses and purposes stated herein, and the Circuit Court for Dane County, Wisconsin, be and it is hereby requested to take supervision of and jurisdiction over the administration of said trust."

3. And the said instrument is also modified and amended by the addition of the following paragraph:

"The said The Joseph M. Boyd Company engages, covenants and agrees to execute all documents which may be necessary or proper to vest in the Trustees herein named or their successor or successors in title any and all assets and/or property of The Joseph M. Boyd Company of whatever kind or nature and wherever located, and the said The Joseph M. Boyd Company does by these presents confirm in all respects the grant and conveyance made to the said trustees on March 23, 1931, and does for further assurance hereby again grant and convey unto the said trustees or successor or successors, and does hereby deliver to him or them all property, real and personal and/or mixed, now owned by The Joseph M. Boyd Company, or in which it has any right, claim, title or interest including all choses in action, book accounts, bills receivable, credits or effects, to which it is beneficially entitled, whether in possession, reversion, remainder or expectancy."

To have and to hold the same unto the said trustees and to their successor or successors or assigns upon the trusts and subject to the provisions and agreements hereinafter declared concerning the same.

[fol. 46] It is hereby declared that the said trustees shall stand possessed of the property, assets, hereditaments, and premises hereinbefore conveyed upon trust and subject to the following terms and conditions:

(a) Said property, choses in action, claims, demands and other assets so assigned as hereinbefore provided shall be converted into money by the trustees or such person or persons as they shall appoint for that purpose, and in such manner and at such time and upon such terms as in the judgment of the said trustees shall be for the best interests

of the parties concerned, and said trustees are hereby authorized, if they deem it advisable so to do, to conduct and continue the business heretofore operated or conducted by The Joseph M. Boyd Company, or any portion thereof, and may hire such help as they deem necessary and pay the same, and incur and pay necessary current expenses in carrying on said business from the receipts of the business and the property.

And the said trustees are hereby authorized to borrow, if they shall deem it necessary for the continuance of said business and authorized to execute and deliver notes, mortgages and/or other proper instruments of conveyance for the security of said loan or loans; and said trustees are authorized specifically to do all things necessary, or which they may deem necessary and/or advisable to be done in carrying on or closing out said business and property as in their judgment may be for the best interests of all parties concerned.

(b) Said trustees shall dispose of and/or collect all of the assets, furniture, fixtures, accounts, securities, claims, choses in action and/or all other property covered by this trust, in such manner and at such times as may to them seem most expedient, and for the best interests of all parties concerned, distributing the net proceeds after the payment [fol. 47] of the necessary expenses of operation and liquidation, as follows, to-wit:

I. Pay all claims, which are by law entitled to be paid in full in priority to other debts as provided in the Acts of Congress relating to bankruptcy and in the order of priority as therein provided.

II. Pay all costs, charges and expenses of and/or incidental to the negotiation, preparation and execution of these presents and carrying the same into effect.

III. Pay, divide and distribute the residue of the said moneys ratably unto and among the creditors of The Joseph M. Boyd Company who may — unsecured without preference, and/or other secured creditors of the debtor after the deduction from the amount of their said claims of the value of their securities; and/or in the event of the secured creditor or creditors surrendering to the trustee any and all securities which they may have, then such

creditors to share ratably with other unsecured creditors; distribution and/or payment to be made upon such installment and at such times as the trustees shall deem proper, and to pay the surplus, if any, to The Joseph M. Boyd Company. Said creditors shall be entitled to receive dividends under these presents in respect of all debts due to them respectively which would have been provable under the National Bankruptcy Act, and on the amounts for which they would have been so provable.

(c) It is hereby declared that notwithstanding the said trust for the sale or distribution of assets herein contained, it shall be lawful for the trustee to postpone the sale and collection of any part of the said property for such time as is consistent with reducing the same to money until the same can be wisely and prudently done. And in the meantime and until the said property and assets hereinbefore conveyed shall have been called in, collected, sold and converted into money, it shall be lawful for their trustees at [fol. 48] their discretion to insure against damage by fire or otherwise at the cost of the trust estate.

(d) For more effectually enabling the said trustees, their successors or assigns, to recover and receive all or any part of the assets, estate, debts, operations, choses in action, claims or effects hereby conveyed, assigned and/or transferred, The Joseph M. Boyd Company has made and appointed and by these presents does make, constitute and appoint the Trustees, their successors or successor or assigns, its attorney-in-fact, and authorize him or them to do all things necessary in conducting said trusteeship, and in fulfilling the conditions of this agreement in its name or in their or his name; to commence, continue, discontinue, compromise, settle, and/or bring suit, perfect and carry out actions or suits against any person or persons or corporations for or on account of any and/or all said estate, property, debt, choses in action or effects.

(e) All of the claims or debts owing by The Joseph M. Boyd Company to the said creditors shall be based upon and allowed in the first instance by the trustees both as to amount, priority and payment, and in allowing and passing upon claims the provisions of the Act of Congress relating to bankruptcy and the decisions thereunder shall govern

with the same force and effect as if the said The Joseph M. Boyd Company had been adjudicated bankrupt as of the date of the original assignment.

(f) The trustees or their successor, successors or assigns, may execute any of the trust or powers hereof or perform any duties required by this instrument by or through their or his attorneys, agents, receivers or employes, and shall be entitled to advice of counsel concerning all matters of trust hereof, his or their duties hereunder, and shall not be liable for any action taken by them or him in good faith and believed to be within the discretion or power conferred [fol. 49] by this indenture. The trustee shall be authorized to pay such reasonable compensation as they may deem proper to such agent or employes as they may reasonably employ in connection with the trust hereof. The trustees shall not be liable for the consequences of any oversight or error in judgment, and shall be answerable only for their own acts, receipts and defaults, and not for those of any person employed by them, and selected with reasonable care, nor for any loss unless the same happens through their own wilful default.

(g) All and every grant, covenant, agreement and condition herein contained shall extend to and be for the benefit and bind the trustees herein mentioned, and their successors or successor in trust. The word "trustees" when used herein to include the trustees herein named, their successor or successors in trust.

And the original assignment of March 23, 1931, is hereby specifically ratified and confirmed with the modifications and amendments herein set forth, to all intents and purposes as though said modifications were originally written into, and constituted a part of said original assignment.

In witness whereof the Joseph M. Boyd Company has caused these presents to be signed by its proper officers pursuant to a resolution duly adopted by its Board of Directors, to wit, the President and secretary, and has caused to be affixed hereto its corporate seal, this 3 day of December, A. D. 1931.

The Joseph M. Boyd Company, by Joseph M. Boyd, President.

Attest: R. R. Kropf, Secretary. (Seal.)

In Presence of William H. Spohn, Edward J. Samp.

[fol. 50] STATE OF WISCONSIN,
County of Dane, ss:

Personally came before me this 3 day of December, A. D. 1931, Joseph M. Boyd, President and R. R. Kropf, Secretary of the above named corporation, to me known to be the persons who executed the foregoing instrument and to me known to be such President and Secretary of said corporation, and acknowledged that they executed the foregoing instrument as such officers as the deed of said corporation by its authority.

Stella E. Byrne, Notary Public, Dane County, Wisconsin. My commission expires July 16, 1933. (Notarial Seal.)

[fol. 51] Due and personal service of the within admitted this 1-th day of December, 1931.

Olin & Butler, Attorney- for Plaintiff.

[File endorsements omitted.]

[fol. 52] IN CIRCUIT COURT OF DANE COUNTY

FRANK J. HESS, Plaintiff,

vs.

JOSEPH M. BOYD COMPANY, Defendant, and CLARENCE E. KARN, L. D. Atkinson, and Leo T. Crowley, Garnishee Defendants

Mrs. J. H. POBRESLO, Plaintiff,

vs.

JOSEPH M. BOYD COMPANY, Defendant, and CLARENCE E. KARN, L. D. Atkinson, and Leo T. Crowley, Garnishee Defendants

FRED KLEIN, SR., Plaintiff,

vs.

JOSEPH M. BOYD COMPANY, Defendant, and CLARENCE E. KARN, L. D. Atkinson, and Leo T. Crowley, Garnishee Defendants

MEMORANDUM OPINION—Filed Jan. 16, 1932

[File endorsements omitted.]

[fol. 53] The Joseph M. Boyd Company is a Wisconsin corporation with its principal offices and place of business in Madison, Wisconsin. It is engaged in the business of selling securities, loans and investments to the public. On March 23d, 1931, it made a voluntary assignment of all its property to Leo T. Crowley, Clarence E. Karn and L. D. Atkinson as assignees, the said assignees took possession of the property and assets of the company and proceeded to the execution of the trust conferred upon them, or attempted to be conferred upon them by the assignment, and petitioned the Circuit Court of Dane County to assume jurisdiction over the assets and property conveyed to them.

On this petition, the Circuit Court of Dane County, on the same date, did assume jurisdiction over the assets and made an order to that effect. It is conceded that no bond was given by the assignees before they received possession of the property and that no bond was ever given to the Clerk of the Circuit Court of Dane County in a sum equal to the value of said assets. However, each of the assignees or trustees, in pursuance of the order of the court, executed a separate and independent bond in the amount of $10,000 each, the date of such order being April 11, 1931.

[fol. 54] There was no appraisal under oath by witnesses or the assignees of the amount of the assets. There was no inventory of the assets made or filed in the office of the Clerk of Circuit Court of Dane County, Wisconsin, within twenty days after making said assignment, but an inventory was filed some time before June 1931. On the 4th day of December, 1931, the said Leo T. Crowley, Clarence E. Karn and L. D. Atkinson resigned said trust in writing and an amendment was made to the original instrument of assignment and on the 10th day of December, 1931, the Circuit Court of Dane County, entered an order accepting the resignation of said trustees and appointed Edward J. Samp as the sole trustee for the administration of such trust.

On July 30, 1931, the plaintiff, Frank J. Hess, began an action of garnishment against the Boyd Company as de-

fendant and said Karn, Atkinson and Crowley garnishees, alleging among other things that a summons had been issued in the original action and that the original action against the Boyd Company was an action to recover damages founded upon contract, in the sum of $6,227.70 with interest thereon, and alleging that the said Karn, Atkinson and Crowley were jointly indebted to and had real and personal property in their possession and under their control belonging to the defendant Boyd Company.

The garnishee defendant, who is now Edward J. Samp, as trustee, answered the garnishment proceedings by an admission of the facts heretofore stated and denied specifically that they, Crowley, Karn and Atkinson, nor the present answering garnishee Samp, had at the time of the service of the garnishee summons or now have in their or his possession or under their or his control, any real estate or personal property, effect or credit of any description belonging to the said Joseph M. Boyd Company, or in which it has any interest. The matter now comes before the court upon motion of the plaintiff for judgment upon [fol. 55] the pleadings.

The issue in this case, broadly stated, is: Did the act of assignment of the Joseph M. Boyd Company pass title to its real and personal property to the trustees, on the theory that it was an assignment under the provisions of Chapter 128 of the Wisconsin Statutes, or a common law assignment lawfully made. It is contended on the part of the plaintiff that the property now in the hands of the trustee is in fact still the property of Joseph M. Boyd Company and subject to garnishment for the reason that the act of assignment under which the garnishee defendant now claims title, was an invasion of the field of the national bankruptcy act and void as to this plaintiff.

The original assignment under which the trustee now claims to hold title, among other things, recites that it is made pursuant to a resolution of the Boyd Company stockholders and a resolution of its directors and assigns, sets over and transfers and conveys to the said Karn, Crowley and Atkinson:

"All its assets of every kind, nature and description, wherever the same may be found or located, in trust nevertheless to receive, handle, manage the same, and convert them into cash, to the end that the just and lawful debts

and demands of said corporation *may be paid and discharged* and the balance of the assets after the payment of the costs of administration be returned to the stockholders of this corporation in accordance with the rights of said stockholders";

and further:

"The reasonable expenses of administration, including a reasonable compensation to the trustees and to counsel, shall be first paid and the assets then used to pay the claims and demands of creditors *in the order of their priorities.*"

The order of the court made pursuant to a petition setting forth the foregoing assignment, among other things, recites as follows:

[fol. 56] "It is ordered that this court does hereby, pursuant to law *and particularly under and pursuant to the provisions of Chapter* 128 *of the Statutes of the State of Wisconsin,* take and assume jurisdiction and supervision over the administration of the assets of the property of and in possession of the Joseph M. Boyd Company at the date of said assignment for the benefit of creditors, made on March 23d, 1931, and of any property that may have come into the possession of said assignees named in said assignment *and the distribution of such assets* among the creditors and claimants against the Joseph M. Boyd Company, according to their just and lawful rights."

So it is quite evident that at the time of the assignment, the petitioners intended to and the court assumed to proceed under the provisions of Chapter 128 of the Statutes of the State of Wisconsin. It is now freely conceded and our Supreme Court has held that in so far as this section provides for a discharge of the debtor, it is entirely superseded by the national bankruptcy act.

In re Tarnowski, 191 Wis. 279.
Hazelwood vs. Olinger Building Department Stores (Wis.), 236 N. W. 591.

But, it is suggested now that even though the assignment was attempted under the direct provisions of Chapter 128, which concededly was not complied with as to the giving of

a bond and in other particulars, and which may also be void as invading the field of the national bankruptcy act, still the assignment is valid as a common law assignment and as such is protected against attachment or garnishment under certain provisions of this same chapter of our law, which the Supreme Court has held valid and as in fact a separate and distinct chapter from the discharge feature of our general assignment law.

Attention is particularly called to the case of International Shoe Company vs. Pinkus, 278 U. S. 261. I submit that as applied to the instant case, the line of reasoning now adopted by the garnishee defendant to meet the emergency as presented in the Pinkus case, is too subtle to be understandable. My position in this matter is not out of harmony with any of the decisions of our own court. It is nowhere held in any of them that an assignment under [fol. 57] the common law or under Chapter 128, which in terms or effect results in an impounding of the debtor's property and a discharge of the debtor company, can be held valid under the decision of the Pinkus case or any other Federal decision.

What I am here holding is in no sense a denial of the common law right inherent in the ownership of property, as indicated in the opinion of Mr. Justice Owen in the Tarnowski case above cited. Conceded that the assignment in the instant case does not, to all legal intents and purposes, amount to an empounding of the debtor's property and if in the end is permitted to proceed to a discharge, then it is a valid common law assignment and does not invade the field of the national bankruptcy act.

Tested by the language of the assignment and the order of the court, all the property of the Boyd Company is turned over to the trustees with full power to administer it, mortgage it, sell and dispose of it. This property of the debtor is thus completely empounded and placed beyond the ordinary remedy of attachment and garnishment by the provisions of Section 128.06.

Tested by the inevitable result of these assignment proceedings if permitted to proceed, the property of this corporation will be disposed of and distributed among such creditors as have filed their claims and the corporation be discharged of its debts, just as effectually as though an order of the court were made barring all creditors who

have not so filed. It is simply an ingenious way of going through bankruptcy under the guise of a common law assignment. There remains, after this trust is complied with, no property of the Boyd Company and no personal liability on the part of its stockholders. The corporation is discharged of its debts and its creditors are barred of any remedy.

[fol. 58] So much for the mere logic of the general rule relating to assignments under state laws that directly or indirectly invade the field of the national bankruptcy act.

The Tarnowski case is authority for holding that the saving clause of Chapter 128, originally Chapter 334 of the Laws of 1897, is a separate and distinct enactment in addition to the Wisconsin laws upon insolvency adopted before the bankruptcy act, and contains besides the saving clause, a provision for distribution and a discharge feature. As I remember the decision in the Tarnowski case, it is authority for holding that the entire enactment fails because it contains the discharge feature. In my opinion, this must eliminate from further consideration, what our courts have previously said in the case of Mayfield Woolen Mills vs. Goodrich and Martineau Co., 189 Wis. 406, because with this saving clause inoperative we are back where we were in Winner vs. Hoyt, 66 Wis. 227, which held that non assenting creditors might resort to garnishment.

In the opinion of Mr. Justice Rosenberry in the Hazelwood case above referred to, much is said that is obiter in regard to the case at bar, for in the Hazelwood case an entirely different situation is presented and that case arose under a different statute, Sec. 286.10, which has no relation to voluntary assignment for the benefit of creditors. It is nowhere suggested that the equity powers of the courts of Wisconsin to preserve property in the course of litigation by the appointment of receivers, is in any wise an invasion of the field covered by the national bankruptcy act. So what the Chief Justice had to say in the Hazelwood case in respect to the wide differences in the Arkansas statute upon which the rule in the Pinkus case rests, and our own assignment law, is obiter. But, it is nevertheless interesting as showing that in fact it is a mere difference in words and not in the legal effect of the [fol. 59] two state statutes.

There is no difference in effect between the Arkansas statute which requires as a condition for participating in the estate, that the creditor execute and deliver a release to the debtor, and the Wisconsin statute which provides that the creditor who does not file his claim will receive no dividends and then proceeds to distribute all the assets of the debtor. As far as the non-filing creditor is concerned, it is just as effectually a discharge of the debtor as the proceeding under the Arkansas statute can possibly be.

So far as the plaintiff in this case now under consideration is concerned, he stands in the position of a single creditor who could not alone invoke the involuntary features of the National bankruptcy act. He has not filed in the assignment proceeding. The assignor is admittedly insolvent. In my opinion, the plaintiff comes squarely within the rule of a person or corporation permitted to obtain a preference under the rule in the Pinkus case.

So, with all due respect to eminent authority to the effect that the discharge feature of the national bankruptcy act is the very essence of the act, I am still of the opinion that the prime purpose of that act in the first instance was to provide a uniform method for the just and equitable distribution of the assets of the estates of bankrupts among creditors and to avoid confusion and conflict among the different states in the administration of such estates, and that the discharge feature was secondary in the minds of Congress when the act was passed. This, from the language of the Pinkus case, seems too plain and significant to admit of serious dispute:

[fol. 60] "It is clear that the provisions of the Arkansas law governing the distribution of property of insolvents for the payment of their debts and providing for their discharge governing the *distribution of property of insolvents, for the purpose of payment of their debts*, and providing for their discharge, or *that otherwise relate to the subject of bankruptcy*, are within the field entered by Congress when it passed the bankruptcy act and therefore such provisions must be held to have been superseded."

So I fail to see a substantial difference between the statutes of Arkansas and the provisions of Chapter 128 of

this state, or this common law assignment, if we choose to so regard it. The difference is in words only. In either case, it is an invasion of the field of the national bankruptcy act and void in toto. The position of the garnishee defendants is a mere play upon words, a legal beating of the devil around the bush.

As indicative of the interpretation that has been placed upon the phrase "invasion of the field of the national bankruptcy act" attention is called to the case of Adrian State Bank et al. vs. Klinkhammer (Minn.), 233 N. W. 588. This suit was brought in an attempt to invoke the involuntary provisions of Chapter 90 of the general statutes of Minnesota as against the defendant, who was a farmer and not subject to the involuntary provisions of the national bankruptcy act. Minnesota has a statute similar to Chapter 128 of the Wisconsin Statutes, and it was under this state statute that the defendant Klinkhammer was thrown into involuntary bankruptcy and a receiver appointed for the purpose of carrying out the provisions of the chapter. It is significant also to note that this chapter suffered somewhat the same fate as Chapter 128 of the Wisconsin statutes suffered in that in 1923 the chapter of the Minnesota statutes relating to involuntary bankruptcy was omitted by the revisor for the reason that the compilers considered the chapter as inoperative while the national bankruptcy act was in force. So the sole question presented to the [fol. 61] Supreme Court of Minnesota was whether or not the involuntary provisions of Chapter 90 may be invoked against a person who is not subject to the involuntary provisions of the national bankruptcy act.

The district court held this chapter of the Minnesota statute could be invoked for that purpose, but it was held on appeal from the decision of the trial court that it was an invasion of the field of the national bankruptcy act and among other things this language was used:

"We are convinced that while the national bankruptcy act * * * is in force, Chapter 90 of the General Statutes of 1913 is in abeyance and inoperative as to farmers, because it attempts to act within the field appropriated by Congress under the national bankruptcy act. To hold otherwise would result in endless confusion and would circumvent the purpose of the act of Congress which evidently

intended to protect the farmer from involuntary bankruptcy proceedings. If we were to hold that Chapter 90 might be invoked for the purpose of distribution of assets alone and that only the provisions for the release of debtors is to be inoperative during the time that the national bankruptcy act is in effect, the insolvency act would be used for the purpose of forcing farmers to take voluntary proceedings under the national bankruptcy act, thus accomplishing indirectly what Congress did not directly permit."

Even as a common law assignment and independently of the national bankruptcy act, this assignment is, in my opinion void for three reasons: 1, in limiting the liability of the trustees; 2, in authorizing the sale of assets upon credit, and 3, in authorizing the continuing of business, the incurring of expenses and mortgaging of property. I fully agree with counsel for the plaintiff that such provisions tend to hinder and delay creditors and makes the entire assignment void.

Vernon vs. Upson, 60 Wis. 418.

It follows from the foregoing that the plaintiff is entitled to judgment upon the pleadings as prayed for in the motion, with costs.

[fol. 62] This case was tried jointly with a case of Fred Klein Sr. against the same defendants and same garnishee defendants, and the case of Mrs. J. H. Pobreslo vs. Guaranty Mortgage Corporation and The Joseph M. Boyd Company, defendants, and the same garnishee defendants. The latter two cases are similar in every respect to the case I have just now decided and hence no separate opinion is necessary to be filed in the latter two cases. The plaintiff in each of those cases, is also entitled to judgment upon the pleadings with costs.

Dated at La Crosse, Wisconsin, this 15th day of January, 1932.

By the Court:

R. S. Cowie, Judge.

[fol. 63] [File endorsements omitted]

IN CIRCUIT COURT OF DANE COUNTY

[Title omitted]

ORDER FOR JUDGMENT—Filed Jan. 27, 1932

At a General Term of the above Court held at Madison, Wisconsin, and on January 27th, 1932.

Present: The Honorable R. S. Cowie, Circuit Judge, Presiding.

The above entitled action coming on to be heard before the Court without a jury on the 21st day of December, 1931, on motion by the plaintiff, by Olin and Butler, her attorneys, for judgment on the pleadings, and Edward J. Samp, by his attorneys, Bagley, Spohn & Ross, having appeared and filed an answer on his own behalf and on behalf of the defendants Leo T. Crowley, Clarence E. Karn and L. D. Atkinson,

And it appearing that this action is a garnishment proceeding ancillary to an action in favor of the plaintiff and against the defendant The Joseph M. Boyd Company, in which action judgment was rendered in the Circuit Court for Dane County on December 19, 1931, in favor of the plaintiff and against the defendant The Joseph M. Boyd Company in the sum of Two Thousand Six Hundred Forty-five and 94/100 Dollars ($2,645.94), which judgment remains wholly unpaid,

[fol. 64] And it appearing that the garnishee summons and affidavits in the above entitled action were served upon the defendant and the garnishee defendants at the time of the service of the summons in said principal action, all of which services were made on July 30, 1931, and it appearing from the said answer of Edward J. Samp that at the time of the service of the garnishee proceedings herein the defendants Leo T. Crowley, Clarence E. Karn and L. D. Atkinson had in their possession and under their control property, moneys, credits and effects belonging to the defendant Joseph M. Boyd Company vastly in excess of the amount of plaintiff's claim, and it appearing further that subsequent to the service of the said garnishee process the said gar-

nishee defendants surrendered and transferred all of said assets to the said Edward J. Samp, who had knowledge of the existence of the said garnishment proceedings, and the court having heretofore filed its memorandum decision in the case of Frank J. Hess vs. Joseph M. Boyd Company, Defendant, and Leo T. Crowley, Clarence E. Karn, and L. D. Atkinson, Garnishee Defendants, pending in the Circuit Court for Dane County, which was tried herewith,

And it appearing from the answer of the said Edward J. Samp that he now has possession of the said assets and property of the defendant, The Joseph M. Boyd Company, and having answered in the said action, has voluntarily subjected himself to the jurisdiction of the court and has made himself a party to this action.

Now, therefore, upon all of the papers, documents, etc., heretofore filed or served in this action, and upon motion of Olin and Butler, Attorneys for the plaintiff,

It is ordered:

[fol. 65] 1. That all of the proceedings in the above entitled action be and they are hereby amended to make the said Edward J. Samp a party as a garnishee defendant.

2. That judgment be entered in favor of the plaintiff and against the garnishee defendants in accordance with the memorandum decision above referred to ordering and adjudging:

(a) That said garnishee defendants are liable as garnishees aforesaid.

(b) That within ten days after service upon him or upon his attorneys of a copy of the judgment herein, the said Edward J. Samp should deliver to the Sheriff of Dane County any and all moneys in his hands belonging to The Joseph M. Boyd Company and received by him by virtue of the assignment by The Joseph M. Boyd Company to the defendants Leo T. Crowley, Clarence E. Karn and L. D. Atkinson and by them transferred to the said Edward J. Samp, or a sufficient amount thereof to satisfy the judgment of the plaintiff in full, to be applied to the satisfaction of plaintiff's said judgment against the defendant.

(c) That if the cash so paid over be not sufficient, the said Edward J. Samp shall turn over to the Sheriff of Dane County, within ten days after service of a copy of the judg-

ment herein, all of the property, credits, effects and assets in his hands belonging to the said Joseph M. Boyd Company.

(d) That the said Sheriff shall thereupon sell and dispose of the said property above described in the same manner as if levied upon execution, the proceeds to be applied [fol. 66] toward the satisfaction of the said judgment against The Joseph M. Boyd Company and the costs of this action, and that the Sheriff shall make due return of such sale.

(e) That if, upon the filing of the Sheriff's report it shall appear that the amounts paid over to the Sheriff or the amounts realized by him upon such sale are insufficient to pay the amount of the plaintiff's judgment, with costs, then the plaintiff may apply to the court for further order and judgment against the garnishee defendants for any deficiency so arising.

Let judgment be entered accordingly.
By the Court:

R. S. Cowie, Judge.

[fol. 67] [File endorsements omitted.]

[fol. 68] [File endorsements omitted]

In Circuit Court of Dane County

Mrs. J. H. Pobreslo, Plaintiff,

vs.

Guaranty Mortgage Company and The Joseph M. Boyd Company, Defendants; Leo T. Crowley, Clarence E. Karn, L. D. Atkinson, and Edward J. Samp, Garnishee Defendants

Judgment—Filed Jan. 27, 1932

At a General Term of the above Court held at Madison, Wisconsin, and on January 27th, 1932.

Present: The Honorable R. S. Cowie, Circuit Judge, Presiding.

This action having been tried before the court, Honorable R. S. Cowie, Circuit Judge, presiding, and the court having filed its memorandum opinion and having filed its order for judgment which is on record;

And the plaintiff having recovered judgment against the defendant Joseph M. Boyd Company, in the principal action for the sum of Two Thousand Six Hundred Forty-Five and 94/100 Dollars ($2,645.94), damages and costs, and the court having ordered and directed judgment as herein adjudged against the garnishee defendants;

Now, on motion of Olin and Butler, attorneys for the plaintiff,

It is ordered and adjudged:

(1) That all of the proceedings in the above entitled action be, and they are, hereby amended to make the said Edward J. Samp a party as a garnishee defendant.

[fol. 69] (2) That the said garnishee defendants are liable as garnishees aforesaid.

(3) That within ten days after service upon him or upon his attorneys of a copy of this judgment, the said Edward J. Samp shall deliver to the sheriff of Dane County any and all moneys in his hands belonging to the Joseph M. Boyd Company, and received by him by virtue of the assignment by the Joseph M. Boyd Company to the defendants Leo T. Crowley, Clarence E. Karn and L. D. Atkinson, and by them transferred to the said Edward J. Samp, or a sufficient amount thereof to satisfy the judgment of the plaintiff in full to be applied to the satisfaction of plaintiff's said judgment against the defendant.

(4) That if the cash so paid over be not sufficient to pay the said judgment in full, the said Edward J. Samp shall turn over to the sheriff for Dane County within ten days after such service of a copy of this judgment all of the property, credits, effects and assets so in his hands belonging to the said Joseph M. Boyd Company.

(5) That the said sheriff shall thereupon sell and dispose of the said property above described in the same manner as if levied upon execution, the same to be applied toward the satisfaction of the said judgment against the Joseph M. Boyd Company, and the costs of this action, and the said sheriff shall make due return of said sale.

(6) That the said plaintiff do have and recover of the said defendants in addition to their liability as garnishee the sum of $83.29, her costs of this action, and that the plaintiff have execution therefor.

(7) That if upon filing of the sheriff's report it shall appear that the amounts paid over to the sheriff, or the amounts realized by him upon such sale, are insufficient to pay the amount of the plaintiff's judgment with costs, then [fol. 70] the plaintiff may apply to the court upon notice to all parties for further order and judgment against the garnishee defendants for any deficiency so arising.

(8) That the said garnishees be, and they are, hereby acquitted and discharged from all demands by the said defendant Joseph M. Boyd Company, or their representatives, for all money, goods, effects and credits which they shall have paid, delivered or accounted for by force of this judgment.

By the Court:

R. S. Cowie, Judge.

[fols. 71-73] [File endorsements omitted.]

[fols. 74 & 75] In Supreme Court of Wisconsin

Mrs. J. H. Pobreslo, Respondent,

vs.

Guaranty Mortgage Corporation and The Joseph M. Boyd Company, Defendants; Clarence E. Karn, L. D. Atkinson and Leo T. Crowley and Edward J. Samp, Garnishee Defendants and Appellants

Dane Circuit Court

Opinion by Justice Nelson

Judgment—May 10, 1932

This cause came on to be heard on appeal from the judgment of the Circuit Court of Dane County, and was argued by counsel. On consideration whereof, it is now here

ordered and adjudged by this Court, that the judgment of the circuit court of Dane County, in this cause, be and the same is hereby reversed, with costs against the said respondent taxed at the sum of —, and that this cause be, and the same is hereby, remanded to the said Circuit Court with directions to set aside the judgment herein and to dismiss the garnishee action.

[fol. 76] [File endorsement omitted]

IN SUPREME COURT OF WISCONSIN, JANUARY TERM, 1932

No. 217

Mrs. J. H. PROBRESLO, Plaintiff,

vs.

JOSEPH M. BOYD COMPANY, Defendant, and Clarence E. KARN, L. D. Atkinson, Leo T. Crowley, and Edward J. Samp, Garnishee Defendants

Appeal from a Judgment of the Circuit Court for Dane County, R. S. Cowie, Circuit Judge

Reversed

OPINION—Filed May 10, 1932

This is a garnishment proceeding commenced on the 30th day of July, 1931, ancillary to an action brought by the plaintiff. The facts are not in dispute and the judgment appealed from was rendered against the garnishee defendants pursuant to plaintiff's motion for judgment on the pleadings.

The defendant, Joseph M. Boyd Company, hereinafter called the defendant, is a Wisconsin corporation which, prior to March 23, 1931, was engaged in the business of selling securities, loaning money and selling property on credit. On March 23, 1931, being financially involved, it made a voluntary assignment of all of its property for the benefit of its creditors, to Leo T. Crowley, Clarence E. [fol. 77] Karn and L. D. Atkinson. The assignment was made pursuant to a resolution of its stockholders and was

evidenced by a writing executed in its behalf by Joseph M. Boyd and R. H. Farness, president and assistant secretary respectively of the company. The three assignees mentioned, each individually in writing, accepted the assignment and the trusts thereby created. The assignees immediately took possession of all of the property of the company and on the same day the circuit court for Dane county assumed jurisdiction over the proceeding. In the written assignment mentioned no reference was made to ch. 128 of the Wisconsin Statutes but the order signed by the circuit court, on assuming jurisdiction and supervision over the administration of the assets and property of the company, recited that it was done "pursuant to law, and particularly under and pursuant to the provisions of Chapter 128 of the Statutes of the State of Wisconsin". The assignees took possession of the company's assets before furnishing any bond. Nineteen days thereafter the three assignees filed separate bonds, each in the sum of $10,000. The total amount of the three bonds did not equal the value of the assets of the company. The value of the assets was at no time determined by the oath of witnesses as required by sec. 128.06, Stats. The assignees did not, in the presence of the county judge or of a court commissioner, endorse on the assignment, their consent to take upon themselves the faithful discharge of the trusts as required by law. (Sec. 128.12, Stats.) The assignors also failed to file an inventory. (128.13). The assignees were expressly author-[fol. 78] ized to submit themselves to the jurisdiction of the circuit court for Dane county and said court evidently took jurisdiction of said matter under the provisions of ch. 128. The court ordered the publication of notices to creditors pursuant to sec. 128.14, and required the filing of proof in accordance with sec. 128.15. The plaintiff did not file her claim pursuant to the provisions of ch. 128, but on July 30, 1931, commenced an action against the company and also a garnishment action against the assignees. The time for answering was extended by consent of the parties. On December 4, 1931, the assignees named in said instrument dated March 23, 1931, resigned; and at the same time, pursuant to resolutions of the company, an amendment was made to the original instrument of assignment. The circuit court, on December 10, 1931, entered an order accepting the resignation of the trustees and appointed Edward J.

Samp as the sole trustee for the administration of the trust. After the resignation of the three assignees and the appointment of Samp as sole trustee, the pleadings were amended so as to make him a garnishee defendant in addition to the three original assignees. Edward J. Samp, as garnishee defendant, made and filed his answer in which the assignment proceedings were recited and in which it was denied that either he or the original assignees had, at the time of the service of the garnishee summons, or at any time thereafter, possession or control of any real estate or personal property belonging to the company or in which it had any interest.

The amended assignment specifically provided that it should be "deemed a common law assignment". The amended assignment further authorized the trustees, if they [fol. 79] deemed it advisable, "to conduct and continue the business heretofore operated or conducted" by the company and to borrow money if they deemed it necessary for the continuance of the business. The amended assignment further provided that the assignees should "pay all debts which are by law entitled to be paid in full in priority to other debts as provided in the Acts of Congress relating to bankruptcy and in the order of priority as therein provided." The trustees were further authorized to "postpone the sale and collection of any part of said property for such time as is consistent with reducing the same to money, until the same can be wisely and prudently done." The amended assignment also provided, in respect to the liability of the trustees as follows:

"The trustees shall not be liable for the consequences of any oversight or error in judgment, and shall be answerable only for their own acts, receipts and defaults, and not for those of any person employed by them, and selected with reasonable care, nor for any loss unless the same happens through their own wilful default."

Additional facts will appear in the opinion. The plaintiff moved for judgment against the garnishee defendants upon the plaintiff's garnishee affidavit and the affidavit and answer of the defendants. The plaintiff's motion was granted and judgment rendered against the garnishee defendants.

[fol. 80] NELSON, J.:

The plaintiff contends that the assignment herein is wholly void and inoperative because the assignees took immediate possession of the property and assets of the company without furnishing a bond as required by sec. 128.06; because the giving of the three separate bonds was not in compliance with said section for the reason that the assets of the company greatly exceeded the sum of $30,000; because the assets of the company at no time were ascertained by the oath of witnesses and of the assignor as required by sec. 128.06; because neither the said assignment nor a full and true copy thereof was at any time delivered to the county judge or a court commissioner; because the assignees did not, in the presence of the county judge or court commissioner, endorse upon the assignment, their consent to take upon themselves the faithful discharge of the duties specified therein; because they did not, within twenty days after the execution of the assignment, make and file, in the office of the clerk of the circuit court for Dane county, an inventory of the assets and a list of the creditors of the company as required by sec. 128.13; and finally, because neither the said court nor the said trustees had jurisdiction or authority to administer the assets of the company because such jurisdiction is in conflict with the provisions of the Federal Bankruptcy Act.

It appears that the three separate bonds were executed and filed pursuant to the order of the court and that in lieu of an inventory of assets and a list of creditors, a report of the company, by certified public accountants, was filed.

[fol. 81] Various contentions are made by the parties in the carefully prepared briefs submitted by them, but in the view we take of this case but two questions require determination.

1. May the provisions of ch. 128, which pertinently relate to voluntary assignments for the benefit of creditors, be severed from the other provisions of said chapter which concededly amount to insolvency proceedings, in that they provide for the discharge of insolvent debtors?

2. If the provisions of ch. 128 regulating voluntary assignments for the benefit of creditors may be severed from the other provisions of said chapter, then are such provisions relating to such assignments for the benefit of creditors, suspended so long as the Federal Bankruptcy Act shall be in force and effect, because in conflict therewith?

A careful reconsideration and review of the history of our statutes regulating voluntary assignments for the benefit of creditors and those relating to insolvency proceedings, leads to the same conclusion reached in In re Voluntary Assignment of Tarnowski, 191 Wis. 279, 210 N. W. 836. In that case the development of our laws relating to assignments for the benefit of creditors as well as those relating to our insolvency proceedings, was carefully reviewed. In that case it was contended that our statutory regulations relating to voluntary assignments for the benefit of creditors were separate and distinct from the provisions of our statutes providing for the discharge of insolvent debtors from their debts. The following cases were cited to support such contention. Binder v. McDonald, 106 Wis. 332, 82 N. W. 156; Segnitz v. Garden City B. & T. [fol. 82] Co., 107 Wis. 171, 83 N. W. 327; Duryea v. Muse, 117 Wis. 399, 94 N. W. 365. After reviewing the several enactments leading up to the then existing law, the court, speaking through Mr. Justice Owen, said (p. 286):

"It follows, therefore, that the features of our voluntary assignment act are separate and distinct from the discharge features first enacted as ch. 385, Laws of 1899."

A careful consideration of all of the acts of the legislature, which are now incorporated into ch. 128 of the statutes, reveals the clear intention of the legislature to provide for two separate and distinct proceedings, one relating to assignments for the benefit of creditors and the other relating to the discharge of insolvent debtors. In view of the recent review by this court of the several enactments leading up to ch. 128, as it now exists, we content ourselves by referring to the opinion in the Tarnowski case. There exists in our minds no question as to the plain duty of this court to construe the several provisions of ch. 128, relating to assignments for the benefit of creditors,

as separate and distinct from the other provisions of said chapter relating to the discharge of insolvent debtors.

The question now arises as to whether the Federal Bankruptcy Act operates to suspend the provisions of ch. 128 relating to assignments for the benefit of creditors. No doubt can longer exist that all state insolvency laws which provide for the discharge of insolvent debtors, are suspended during the existence of the Federal Bankruptcy Act. If a state law is an insolvency law, the authorities are all to the effect that such law is suspended and wholly superseded by the Federal Bankruptcy Act.

In the Tarnowski Case it was held that the discharge features of our law are suspended by the Federal Bank- [fol. 83] ruptcy Act but that the provisions regulating voluntary assignments for the benefit of creditors do not contravene the Federal Bankruptcy Act and are still in force. The plaintiff, however, contends that the decision in the Tarnowski Case should be considered overruled by International Shoe Co. v. Pinkus, 278 U. S. 261. The plaintiff contends that the following language is amply broad to cover state laws regulating assignments for the benefit of creditors:

"In respect of bankruptcies the intention of Congress is plain. The national purpose to establish uniformity necessarily excludes state regulation. It is apparent, without comparison in detail of the provisions of the Bankruptcy Act with those of the Arkansas statute, that intolerable inconsistencies and confusion would result if that insolvency law be given effect while the national Act is in force. Congress did not intend to give insolvent debtors seeking discharge, or their creditors seeking to collect claims, choice between the relief provided by the Bakruptcy Act and that specified in the state insolvency law. States may not pass or enforce laws to interfere with or complement the Bankruptcy Act or to provide additional or auxiliary regulations. Prigg v. Pennsylvania, 16 Pet. 539, 617, 618. Northern Pac. Ry. v. Washington, 222 U. S. 370, 378, et seq. St. Louis, Iron Mt. & S. Ry. v. Edwards, 227 U. S. 265. Erie R. R. Co. v. New York, 233 U. S. 671, 681, et seq. New York Central R. R. Co. v. Winfield, supra. Erie R. R. Co. v. Winfield, supra. Oregon-Washington Co. v. Washington, 270 U. S. 87, 101."

This language, considered separately and apart from the opinion in which it appears, might be considered sufficiently broad (although it quite clearly relates to insolvency proceedings and to involuntary proceedings commenced by creditors against insolvent debtors), to justify the conclusion that any proceeding which provided for the ratable distribution of property of insolvents among credtors, is within the field entered by Congress when it passed the Bankruptcy Act. Such a conclusion, however, is not justified when prior decisions of the United States Supreme Court are given consideration. In Mayer v. Hellman, 91 U. S. 496, which in- [fol. 84] volved an assignment for the benefit of creditors under the laws of the state of Ohio and in which the main question involved was whether an adjudication in bankruptcy had the effect of suspending the further operation of the state assignment laws, and in which it was specifically and earnestly contended that such law was an insolvent act even though it did not purport to discharge the debtor from paying his debts, it was said, by Mr. Justice Field, speaking for the court (p. 502):

"In the argument of the counsel of the defendant in error, the position is taken that the Bankruptcy Act suspends the operation of the act of Ohio regulating the mode of administering assignments for the benefit of creditors, treating the latter as an insolvent law of the State. The answer is, that the statute of Ohio is not an insolvent law in any proper sense of the term. It does not compel, or in terms even authorize, assignments; it assumes that such instruments were conveyances previously known, and only prescribes a mode by which the trust created shall be enforced. It provides for the security of the creditors by exacting a bond from the trustee for the discharge of their duties; it requires them to file statements showing what they have done with the property; and affords in various ways the means of compelling them to carry out the purposes of the conveyance. There is nothing in the act resembling an insolvent law. It does not discharge the insolvent from arrest or imprisonment; it leaves his after-acquired property liable to his creditors precisely as though no assignment had been made. The provisions for enforcing the trust are substantially such as a court of chancery would apply in the absence of any statutory provision. The assignment in this case must,

therefore, be regarded as though the statute of Ohio, to which reference is made, had no existence. There is an insolvent law in that State; but the assignment in question was not made in pursuance of any of its provisions. The position, therefore, of counsel, that the Bankruptcy Law of Congress suspends all proceedings under the Insolvent Law of the State, has no application.

"The assignment in this case being in our judgment valid and binding, there was no property in the hands of the plaintiffs in error which the assignee in bankruptcy could claim. The assignment to them divested the insolvents of all proprietary rights they held in the property described in the conveyance. They could not have maintained any action either for the personalty or realty. There did, indeed, remain to them an equitable right to have paid over to them any remainder after the claims of all the creditors were satisfied. If a contingency should ever arise for the assertion of this right, the assignee in bankruptcy may perhaps have a claim for such remainder, to be applied to the payment of creditors not protected by the assignment, and whose demands have been created subsequent to that instrument. Of this possibility we have no occasion to speak now."

[fol. 85] Later on in Boese v. King, 108 U. S. 379, which involved a general assignment for the benefit of creditors made under the laws of the state of New Jersey, which provided for the administration of the assets of debtors who made assignments for all of their assets to trustees for creditors, and for their discharge from liabilities to creditors who shared in the distribution, it was held that the New Jersey statute was inoperative in so far as it provided for the discharge of the debtor. It was held by a divided court as follows (p. 385):

"Undoubtedly the local statute was, from the date of the passage of the Bankrupt Act, inoperative in so far as it provided for the discharge of the debtor from future liability to creditors who came in under the assignment and claimed to participate in the distribution of the proceeds of the assigned property. It is equally clear, we think, that the assignment by Locke of his entire property to be disposed of as prescribed by the statute of New Jersey, and

therefore independently of the bankruptcy court, constituted, itself, an act of bankruptcy, for which, upon the petition of a creditor filed in proper time, Locke could have been adjudged a bankrupt, and the property wrested from his assignees for administration in the bankruptcy court. In re Burt, 1 Dillon, 439, 440; In re Goldschmidt, 3 Bank. Reg. 164; In Matter of Seymour T. Smith, 4 Bank. Reg. 377. The claim of Pickhardt and Kutroff existed at the time of the assignment. The way was, therefore, open for them, by timely action, to secure the control and management of the assigned property by that court for the equal benefit of all the creditors of Locke. But they elected to lie by until after the expiration of the time within which the assignment could be attacked under the provisions of the Bankrupt Act; and now seek, by this suit in the name of the plaintiff in error, to secure an advantage or preference over all others; this, notwithstanding the assignment was made without any intent to hinder, delay, or defraud creditors. In order to obtain that advantage or preference, the plaintiff in error relies on the paramount force of the Bankrupt Act, the primary object of which, as this court has frequently announced, was to secure equality among the creditors of a bankrupt. Mayer v. Hellman, 91 U. S. 496-501; Reed v. McIntyre, 98 U. S. 507-509; Buchanan v. Smith, 16 Wall. 277. It can hardly be that the court is obliged to lend its aid to those who, neglecting or refusing to avail themselves of the provisions of the act of Congress, seek to accomplish ends inconsistent with that equality among creditors which those provisions were designed to secure. If it be assumed, for the purposes of this case, that the statute of New Jersey was, as to each and all of its provisions, suspended when the Bankrupt [fol. 86] Act of 1867 was passed, it does not follow that the assignment by Locke was ineffectual for every purpose. Certainly, that instrument was sufficient to pass the title from Locke to his assignees. It was good as between them, at least until Locke, in some appropriate mode, or by some proper proceedings, manifested a right to have it set aside or cancelled upon the ground of a mutual mistake in supposing that the local statute of 1846 was operative. And in the absence of proceedings in the bankruptcy court impeaching the assignment, and so long as Locke did not object, the assignees had authority to sell the property

and distribute the proceeds among all the creditors, disregarding so much of the deed of assignment as required the assignees, in the distribution of the proceeds, to conform to the local statute."

Still later on in Stellwagen v. Clum, 245 U. S. 605, Mayer v. Hellman, supra, was referred to, apparently with full approval, the court quoting at length from that case, and further saying (p. 617):

"The federal system of bankruptcy is designed not only to distribute the property of the debtor, not by law exempted, fairly and equally among his creditors, but as a main purpose of the act, intends to aid the unfortunate debtor by giving him a fresh start in life, free from debts, except of a certain character, after the property which he owned at the time of bankruptcy has been administered for the benefit of creditors. Our decisions lay great stress upon this feature of the law—as one not only of private but of great public interest in that it secures to the unfortunate debtor, who surrenders his property for distribution, a new opportunity in life. Neal v. Clark, 95 U. S. 704, 709; Tear v. Clews, 115 U. S. 528, 541; Hanover National Bank v. Moyes, 186 U. S. 181, 192; Wetmore v. Markoe, 196 U. S. 68, 77; Burlington v. Crouse, 228 U. S. 459, 473. This feature of the bankruptcy law is wholly wanting in the Ohio statutes under consideration. Indeed, there is not now, any more than when Mayer v. Hellman, supra, was decided, any attempt in the Ohio laws to provide for the discharge of the debtor from his existing debts."

These decisions of the United States Supreme Court seem squarely to hold that laws which merely regulate assignments for the benefit of creditors are not insolvency laws and are therefore not in conflict with the Federal Bankruptcy Act.

It is, of course, clear that the provisions of the Federal Act, ch. 3, sec. 3a subsec. 4, make a general assignment for [fol. 87] the benefit of creditors an act of bankruptcy. No authority need be cited to the point that when an assignment for the benefit of creditors is made, all proceedings in the state court may be superseded by the federal court if a petition in bankruptcy is filed within four months from such act of bankruptcy.

But the plaintiff earnestly contends that the holdings in the three United States Supreme Court cases just reviewed must be considered overruled by International Shoe Co. v. Pinkus, supra. A careful reading of that decision impels the conclusion that plaintiff's contention is unsound. That case involved proceedings under an Arkansas statute which provided for the commencement of a suit in the chancery court by the insolvent, praying to be so adjudged, and for the appointment of a receiver to take and distribute his property as directed by that statute. The plaintiff therein was adjudged insolvent, a receiver was appointed, who was directed to take the property of the insolvent and liquidate it, and creditors were directed to make proof of their claims "with the necessary stipulation that they will participate in the proceeds in full satisfaction of their demands." This statute was held by the court to be an insolvency law, the court saying (p. 264):

"The Arkansas statute is an insolvency law. It is so designated in its title (Acts of Arkansas, 1897) and in the revision. C. 93, supra. The supreme court of the State treats it as such. Hickman v. Parlin-Orendorff Co., 88 Ark. 519. Baxter County Bank v. Copeland, 114 Ark. 316, 322. Morgan v. State, 154 Ark. 273, 279, 281. This case, 173 Ark. 316. Friedman & Sons v. Hogins, 175 Ark. 599. It provides for surrender by insolvent of all his unexempt property (sec. 5885) to be liquidated by a trustee for the payment of debts under the direction of the court. It classifies creditors, prescribes the order of payment of [fol. 88] their claims and gives preference to those fully discharging the debtor in consideration of pro rata distribution (sec. 5888). Mayer v. Hellman, 91 U. S. 496, 502. Stellwagen v. Clum, supra. Segnitz v. Garden City Co., 107 Wis. 171. In re Weedman Stave Co., 199 Fed. 948, and cases cited."

In that case Mayer v. Hellman, supra, Stellwagen v. Clum, supra, and Boese v. King, supra, were all cited with no intimation that the doctrines stated therein were not sound. In the very recent case of Straton v. New, 283 U. S. 318, the three cases just mentioned were cited in the opinion with no intimation that they were overruled. Referring to Stellwagen v. Clum, supra, it was said (p. 327):

"It was pointed out in Stellwagen v. Clum, supra, that state laws which provide for sale and distribution of a debtor's property may not amount to insolvency laws; and it was there held that such laws, if not inconsistent with the administration of the bankruptcy act, are available to litigants. Appellees must therefore show that the statutory action of the state court is, in fact, an insolvency proceeding. The certificate states no facts which lead to such a conclusion, nor does it so denominate the creditors' suit. Reference to the statutes of West Virginia, of which we take judicial notice, demonstrates that it is not in that category."

It is inconceivable that so eminent a court would intend to overrule three of its former decisions without specifically so stating. The intention of that court to overrule former decisions is generally expressed by apt and unambiguous language. There is nothing in the Pinkus or Straton Cases which justifies the contention that the former decisions of [fol. 89] that court reviewed herein, were intended to be overruled.

Until the Supreme Court of the United States clearly manifests its intent to overrule its former decisions, by holding that state statutes, regulating voluntary assignments for the benefit of creditors, are suspended by the Federal Bankruptcy Act, we are not disposed to hold that such regulatory laws conflict with the Federal Bankruptcy Act, or that proceedings thereunder may not be taken and carried through, unless superseded by properly, and in a timely manner, invoking the jurisdiction of a bankruptcy court. We perceive in the regulatory provisions of ch. 128, stats., relating to voluntary assignments for the benefit of creditors many provisions which operate to the benefit of both debtors and creditors. To strike down voluntary assignments for the benefit of creditors, would be to destroy ancient, expeditious and well recognized proceedings which have proved of great value not only to insolvent debtors, to debtors not actually insolvent, but in financial distress, and to creditors. We have no thought or intention of questioning the right of Congress to occupy exclusively the bankruptcy field but we fail to find any provision of the bankruptcy act or any decision of the United States Supreme Court construing it, which forbid voluntary assignments

for the benefit of creditors, when not superseded by bankruptcy proceedings.

But the plaintiff further contends that, even assuming that our assignment laws are not suspended by the Federal Bankruptcy Act, the assignment herein is void because the assignees took possession of the assets before giving proper [fol. 90] bond, because no adequate bond was ever given, because no appraisal was made and filed and because no inventory was furnished. It is conceded that the provisions of ch. 128, in the respects mentioned, were not complied with. The plaintiff contends that non-compliance with the statute in the respects mentioned rendered the assignment absolutely void. Under the law as it existed prior to the enactment of ch. 334 of the laws of 1897, the contentions of the plaintiff would be absolutely sound. However, by said chapter there was added to sec. 128.06, stats., the following plain and specific language:

"No creditor shall, in any case where a debtor has made or attempted to make an assignment for the benefit of creditors, or in case of insolvency of any debtor, by attachment, garnishment or otherwise, obtain priority over other creditors upon such assignment being for any reason adjudged void, or in consequence of any sale, lien or security being adjudged void under the provisions of this act. And in all such cases the property of such insolvent debtor shall be administered for the ratable benefit of all creditors of such insolvent debtor under the direction of the court, by the assignee or any receiver of said property and estate appointed as hereinafter provided."

In Gilbert Paper Co. v. Whiting Paper Co., 123 Wis. 472, 102 N. W. 20, the above language of ch. 334, Laws of 1897, first came before this court. After referring to the rules of former cases and to the statute itself, this court, speaking through Mr. Justice Dodge, said (p. 478):

"We can entertain no doubt that this legislation was aimed directly at the rule laid down in Winner v. Hoyt, supra, and following cases, that property attempted to be conveyed by a void voluntary assignment could be seized by any individual creditor by attachment or garnishment. Indeed, its words are too plain to invite or permit attempt to construe it upon that subject. We can but enforce it."

See also Plewa v. St. Josaphats Congregation, 153 Wis. 276, 141 N. W. 267, and the recent case of Mayfield Woolen Mills

[fol. 91] v. Goodrich & Martineau Co., 189 Wis. 406, 207 N. W. 554, in which the language of Mr. Justice Dodge was quoted with complete approval.

The plaintiff further contends that the amended assignment herein cannot be sustained as a common law assignment. We need give no consideration to such contention for the reason that the assignment herein was, in any event, an attempt to make an assignment for the benefit of creditors. Of this there can be no doubt. The plaintiff's remedy therefore was that afforded by sec. 128.06, stats., as pointed out in Mayfield Woolen Mills v. Goodrich & Martineau Co., supra, p. 412.

The plaintiff has cited numerous cases found in the Federal Reporter, and has quoted extensively therefrom; these quotations considered by themselves, independently of the facts involved, might support the conclusion that discharge provisions found in the ordinary insolvency law are not essentials of a bankruptcy law, and that a state law which provides for the distribution of the assets of an insolvent debtor among his creditors, even though it has no discharge provision, is nevertheless suspended by the bankruptcy law. We have examined with great care the many decisions cited and conclude that they do not support the contention. What they do hold is that an assignment for the benefit of creditors is an act of bankruptcy and when thereafter the jurisdiction of a bankruptcy court is properly and in a timely manner invoked, all proceedings in the state courts, pursuant to voluntary assignments, are superseded. [fols. 92-94] See particularly, in re Smith, 92 Fed. 135; In re Starck Lumber Co., 114 Fed. 360; In re F. A. Hall, 121 Fed. 992; In re Salmon, 143 Fed. 395.

We have no quarrel with the holdings in these cases.

We conclude, therefore, that the provisions of ch. 128, relating to voluntary assignments for the benefit of creditors are properly severable from the remaining sections of said chapter; that so severed they are not in conflict with the Federal Bankruptcy Act; that an assignment for the benefit of creditors is an act of bankruptcy and all proceedings in the state court might be superseded by the federal bankruptcy act when the jurisdiction of the federal court is properly and in a timely manner invoked; that ch. 334 of the laws of 1897, constitutes a valid enactment and barred the plaintiff herein from bringing a garnishment action

against the assignees, even though the assignment would otherwise be void but for such saving clause. The judgment of the circuit court must, for the reasons stated, be reversed.

By the Court: Judgment reversed with directions to set aside the judgment herein and to dismiss the garnishee action.

[fols. 95 & 96] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED ON AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed June 23, 1932

Comes now the appellant and adopts her assignments of error as her statement of the points to be relied upon and requests that there be printed by the Clerk for the hearing of this case:

Title of paper	Page of record
(1) Garnishee Affidavit	23-29
(2) Affidavit and Answer of Garnishees, with exhibits attached	30-49
(3) Decision of Trial Court	52-62
(4) Order for Judgment	63-66
(5) Judgment	68-70
(6) Opinion of Supreme Court of Wisconsin and Mandate	76-92
(7) Petition for Appeal—So much thereof as contains "Assignments of Error"	1-3

C. G. Mathys, J. H. Wegener, R. M. Rieser, Counsel for Appellant.

Service of a copy of the within statement admitted June 3, 1932.

Bagley, Spohn, Ross & Stevens, Attys. for Garnishee Defendants.

[fol. 97] [File endorsement omitted.]

Endorsed on cover: File No. 36,868. Wisconsin Supreme Court. Term No. 171. Mrs. J. H. Pobreslo, appellant, vs. Joseph M. Boyd Company, Clarence E. Karn, L. D. Atkinson, et al. Filed June 23, 1932. File No. 36,868.